No. 80-1287

FEB 26 1981
ALEXANDER L. STEVAS
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

INEXCO OIL COMPANY,
A DELAWARE CORPORATION,
Petitioner,

vs.

NEVEL A. WALTERS AND MRS. DELPHIA WALTERS, Plaintiffs, AND LOFFLAND BROTHERS, COMPANY, Third-Party Defendant,
Respondents.

BRIEF OF LOFFLAND BROTHERS COMPANY, ONE OF THE RESPONDENTS, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

DORRANCE AULTMAN
AULTMAN & AULTMAN
Post Office Drawer 750
Hattiesburg, Mississippi 39401
Telephone: (601)583-2671
Attorney for Loffland Brothers Company, one of the Respondents

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

QUESTIONS PRESENTED

I

There is no factual basis for contention that any indemnity provision contained in agreement between Inexco Oil Company and Loffland Brothers has application.

II

There exist no conflicts of decisions among the United States Court of Appeals, no improper interpretation of law, nor does any other reason exist for granting Petition for Writ of Certiorari.

TABLE OF CONTENTS

	Page
Questions Presented	i
I. There is no factual basis for contention that any indemnity provision contained in agreement between Inexco Oil Company and Loffland Brothers has application	i
II. There exist no conflicts of decisions among the United States Court of Appeals, no improper interpretation of law, nor does any other reason exist for granting Petition for Writ of Certiorari	i
Statement of the Case	1
Reasons for Denying the Writ	4
I. There is no factual basis for contention that any indemnity provision contained in agreement between Inexco Oil Company and Loffland Brothers has application	4
II. There exist no conflicts of decisions among the United States Court of Appeals, no improper interpretation of law, nor does any other reason exist for granting Petition for Writ of Certiorari	5
Conclusion	8
Appendix	A-1
Declaration - Nevel A. Walters v. Inexco Oil Company	A-1
Declaration - Mrs. Delphia Walters v. Inexco Oil Company	A-6

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TABLE OF CITATIONS

Cases

Crosby v. General Tire & Rubber Co., (5th Cir. 1976) 543 F.2d 1128 5,7

Ramsey v. Georgia-Pacific Corp., (5th Cir. 1979) 597 F.2d 890 5,6

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STATEMENT OF THE CASE

This case originated as a result of an accident which occurred on February 26, 1971, involving Mr. Nevel A. Walters, one of the Plaintiffs, an employee of Loffland Brothers Company, one of the Respondents herein. The Plaintiff, Mr. Nevel A. Walters was working in Clarke County, Mississippi, in the employ of Loffland Brothers Company. The work was being done by Loffland Brothers Company for Inexco Oil Company, the Petitioner herein, who was the operator of the drilling operation be-

ing conducted at the time the accident occurred. Loffland Brothers Company, as contractor, was drilling the well for Inexco, the operator and owner of the lease. Following the accident, the Plaintiff, Nevel A. Walters, applied for and obtained Workmen's Compensation benefits under the Mississippi Workmen's Compensation Act, both compensation and medical benefits. The benefits were paid by Travelers Insurance Company, Loffland Brothers' Workmen's Compensation insurance company. On February 24, 1977, the Plaintiff, Nevel A. Walters and his wife, Mrs. Delphia Walters, filed separate suits against Inexco Oil Company seeking recovery in tort from Inexco Oil Company asserting negligence against Inexco Oil Company in failing to provide Mr. Walters with a safe place to work. (Appendix A-1 and A-6) This is the only theory of negligence asserted against the original Defendant.

Inexco denied claims of negligence asserted against it, and denied right of recovery sought by the Plaintiffs, Mr. and Mrs. Walters. Subsequent to that time, Inexco Oil Company obtained leave of the Court and filed a third-party complaint against Loffland Brothers Company under claimed indemnity asserted to exist in agreement of December 17, 1970, between Inexco Oil Company and Loffland Brothers Company. Loffland denied the right to recovery by Inexco Oil Company under any contract of indemnity, asserted affirmatively the statute of limitations, and the insulating feature of the Workmen's Compensation Act. Additionally, Loffland Brothers set forth in its pleading inapplicability of the indemnity clause of the contract to the facts before the Court, or, alternatively, the invalidity of any such agreement under Mississippi law. After the cases were consolidated, trial was had before United States District Judge Walter Nixon, Jr., resulting in the rendition of judgment in favor of the Plaintiffs as against Inexco Oil Company, the Petitioner, and in favor of the third-party defendant, Loffland Brothers Company.

It is to be noted that none of the pleadings claimed any negligence against Loffland Brothers Company. The sole basis for the lower court's decision against Inexco Oil Company was based upon Inexco Oil Company's failure to provide Nevel A. Walters, one of the Plaintiffs, with a safe place to work.

REASONS FOR DENYING THE WRIT

I

There is no factual basis for contention that any indemnity provision contained in agreement between Inexco Oil Company and Loffland Brothers has application.

The Petitioner, Inexco Oil Company, is asserting that the contract in question was meant to be a complete indemnity as between the parties, and that Loffland Brothers Company should "be required under this applicable law to stand between Inexco Oil Company and loss". The quoted part of the contract as set forth in the Petition for Writ of Certiorari provides in Paragraph 11.3 thereof as follows:

> "11.3 Contractor agrees to protect, indemnify, and save Operator harmless from and against all claims, demands, and causes of action of every kind and character arising in favor of Contractor's employees, Operator's employees, or third parties on account of bodily injuries, death, or damage to property in any way resulting from the willful or negligent acts or omissions of Contractor and/or Contractor's agents, employees, representatives, or subcontractors."

The pleadings, and the proof, reflected that the Plaintiffs' theory of right of recovery against Inexco Oil Company was the failure of Inexco to furnish to Mr. Walters a safe place to work. This issue is between Inexco Oil Company and Mr. Walters, the Plaintiff, and Mrs. Walters, the remaining Plaintiff, an issue foreign to Loffland. The trial court found in its decision that the responsibility for furnishing a safe place to work rested with Inexco Oil Company, and that Loffland Brothers Company was in no way negligent, and no finding of any fact was made against Loffland Brothers Company which would give rise to or trigger the applicability of the agreement between the parties, even assuming that the same is valid, and is a binding indemnity agreement.

It is rather elementary that the third party pleading practice restricts and limits recovery to the theory set forth against the original Defendant, as against a third party defendant. In other words, the affirmative allegations contained in the original complaint (see Appendix A-1 and A-6), must afford basis for recovery against Loffland Brothers Company. As no facts were alleged or proved against Loffland Brothers Company on any theory of negligence, no reasons exist for the applicability of the agreement, regardless of the validity thereof.

It is submitted that under the findings of the trial court, which were affirmed by the United States Court of Appeals for the Fifth Circuit by adopting the decision of the trial court, it is patent that no liability could attach to Loffland Brothers Company because of the negligence of Inexco Oil Company, and, consequently, no application of the claimed indemnity agreement could arise under the findings of fact by the trial court as approved by the Court of Appeals as above stated.

II

There exist no conflicts of decisions among the United States Court of Appeals, no improper interpretation of law, nor does any other reason exist for granting Petition for Writ of Certiorari.

It is contended by the Petitioner that a conflict of decisions exists in the Fifth Circuit, and the Petitioner cites the cases of *Crosby* v. *General Tire & Rubber Co.* (5th Cir. 1976) 543 F.2d 1128 and the case of *Ramsey* v. *Georgia-Pacific Corp.*, (5th Cir. 1979) 597 F.2d 890, as authority for this proposition.

It is most respectfully submitted that no conflict exists between the findings of the United States Court of Appeals for the Fifth Circuit in the *Crosby* case, *supra.*, and the *Ramsey* case, *supra.*

As the findings of the trial court will reflect, and as affirmed by the Court of Appeals, Loffland Brothers Company was guilty of no negligence in causing that which occurred in this case. In the case of *Ramsey* v. *Georgia-Pacific Corp., supra.*, the court noted at the outset that the questions presented to the court were: "First, is it possible for the Plaintiff to recover a judgment against Georgia-Pacific for injuries that were caused in part by the actions of Walker Welding and in part by its own actions . . .".

The case was before the court on appeal from a ruling of the lower courts sustaining a motion for summary judgment.

In the *Ramsey* case, Georgia-Pacific had entered into a contract with Walker Welding and Machine Company whereby the latter was to do certain work for Georgia-Pacific, with Walker Welding and Machine Company being responsible for the entire operation, and to indemnify Georgia-Pacific. An employee of Walker Welding and Machine Company attached a chain to the end of a conveyor and to a lifting hook on a cherry picker crane provided by Georgia-Pacific and operated by Georgia-Pacific employee. The Georgia-Pacific employee lifted the conveyor at the instruction of Walker Welding employee injuring the plaintiff, an employee of Walker Welding. Suit was instituted against Georgia-Pacific Corp. on the theory that Georgia-Pacific had exclusive supervision and control of the work site and the installation operation and was negligent in failing to adequately support or use sufficient devices to lift the conveyor and prevent its fall and in failing to provide plaintiff with a safe place to work. Georgia-Pacific filed a third party complaint against Walker Welding and the lower court granted motion for summary judgment. In that case, the issue before the court was limited to whether or not Walker Welding would be responsible for damages Georgia-Pacific incurred because of Walker Welding's negligence. This was a limited issue before the court, and the court reversed and remanded the matter for a trial on its merits. The court indicated very clearly that it was not deciding

or predicting how the litigation might come out. The court said: "A full hearing may disclose that the agreement cannot be interpreted as we had suggested here".

The case of *Crosby* v. *General Tire & Rubber Co.* is not in variance with or in conflict with either the *Ramsey* case, in which the *Crosby* case was cited, nor the case on which the Petitioner is here seeking a Petition for Writ of Certiorari. The court in the *Crosby* case held that the indemnity agreement whereby General Tire & Rubber Co. sought the protection of an agreement to protect it against its own negligence was invalid under the statutes of the State of Mississippi. It was also contended that even if Mississippi law prohibited General Tire from insulating itself against its own negligence, that the statute did not prohibit recovery under the agreement for that portion of the settlement with Crosby which was attributable to the party giving the indemnity agreement. The court found that General Tire & Rubber Co.'s liability was that which gave rise to the settlement, and that it could not, therefore, shift the responsibility to the party giving the indemnity agreement.

As was found by the trial court and affirmed by the United States Court of Appeals, Loffland Brothers Company, one of the Respondents, was in no way negligent in the accident which gave rise to this litigation. Consequently, the contract about which complaint is sought to be made by the Petitioner is not applicable to the facts as found.

Consequently, there is no conflict of decisions of another court of appeals, nor of the Fifth Circuit, on the same matter, and the above matter does not involve any important state or territorial questions, or conflicts, nor does it involve any important questions of federal law which has not been decided, and, consequently, no basis exists for the granting of a Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit should be denied.

CONCLUSION

Loffland Brothers Company, one of the Respondents, requests the court to deny the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

DORRANCE AULTMAN
400 Professional Building
P. O. Drawer 750
Hattiesburg, Mississippi 39401
Attorney for Loffland
Brothers Company, one of
the Respondents

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

Civil Action
No. 7720216

Nevel A. Walters,
Plaintiff,

vs.

Inexco Oil Company, a Delaware Corporation,
Defendant.

DECLARATION

Comes now NEVEL A. WALTERS, PLAINTIFF, and files this his Declaration for personal injuries and damages against INEXCO OIL COMPANY a Delaware Corporation, and for cause of action, would show unto the Court the following:

I.

That the plaintiff is an adult resident citizen of the Second Judicial District of Jones County, Mississippi.

II.

That the defendant, INEXCO OIL COMPANY, is a Delaware Corporation organized and existing under and by virtue of the laws of the State of Delaware qualified to do business and doing business in the State of Mississippi, and has appointed as its agent for service of process in the State of Mississippi, C. T. Corporation System, 118 North Congress Street, Jackson, Hinds County, Mississippi.

III.

That on and before the 26th day of February, A. D., 1971, the plaintiff herein was employed as a floorman with Loffland Brothers Company, an oil well drilling company, and was in the course of performing his duties and responsibilities of employment at Masonite Well No. 3 located in the Prairie Branch Field in Section 15, Township 1 North, Range 14 East in Clarke County, Mississippi; that Loffland Brothers Company was drilling said oil well for the defendant, Inexco Oil Company, on said location; that the oil well location was owned and operated by the defendant corporation, which was in complete charge of all operations at said well site; that it was the duty of the defendant corporation to promulgate safety regulations and precautions pertaining to the well site, its equipment and surrounding area; that because of the nature of the oil well drilling and prospect of production, it was extraordinarily dangerous and hazardous to persons working in and around the well site; that the corporate defendant assumed the duty of performing safety measures at the said well site; that it was the duty of the corporate defendant to specify safe materials and equipment and to prescribe safety regulations and precautions and to properly test and inspect said materials and equipment to insure the safety of those required to work in and about said well site.

IV.

That on said date and occasion, plaintiff was an employee of Loffland Brothers Company and was working as a floorman on Loffland Brothers' Rig No. 328, which was drilling said oil well for the defendant corporation; that said well site and its entire operations were under the control and supervision of the defendant and its agents and supervisors; that at the specific instance and request of the defendant, Inexco Oil Company, and its agents and supervisors, plaintiff had been directed and instructed to go down to ground level and to hook up the kill line from the mud line to the valves on the wellhead, at a time when

the pumps were pumping, and was in the process of preparing to connect a chicksan union to the mud line when, suddenly and without any warning whatsoever, a two (2) inch nipple between the well head and the well head valves failed, causing an explosion and causing the steel chicksan line to be blown into plaintiff's leg and knocking plaintiff down under the drilling line spool, seriously and painfully injuring plaintiff, as hereinafter described.

V.

Plaintiff charges and alleges that the corporate defendant, through its duty authorized agents and employees, was guilty of negligence which proximately caused the accident herein, said negligence consisting more particularly of the following:

A. Negligently failing to exercise reasonable care in the specification, design, inspection and testing of the low-pressure nipple between the well head and well head valve.

B. Negligently failing to properly install and test the kill line when the blowout preventer stack was originally installed and tested.

C. Negligently failing to properly install the kill line to the flow cross.

D. Negligently failing to properly install and test the kill line when the pumps were not pumping.

E. Negligently failing to give the plaintiff reasonable warning of the inherent dangers incident to being in close proximity to the low-pressure nipple between the well head and the well head valve as the kill line was being installed.

F. Negligently failing to use reasonable care in the installation and testing of the kill line.

G. Negligently failing to provide plaintiff a safe place in which to perform the duties of his employment.

H. Negligently failing to inspect and test the well head, well head valve and low-pressure nipple prior to killing a "kick".

I. Negligently failing to provide adequate supervision and direction.

J. Negligently failing to furnish, install and maintain proper and adequate safety devices.

VI.

That the defendant corporation and its agents and supervisors were, at the time, in exclusive control of the oil well site and all operations, and in particular, the well head, well head valve and kill line, and its design, installation and testing, and the defendant corporation, by and through its agents and supervisors, negligently caused and permitted the kill line to be improperly installed and tested, causing an explosion, at a time when plaintiff was a business invitee on the premises and in the course of his employment in and about the ground level area; that as a result of the explosion, plaintiff was severely injured; that this occurrence was one which ordinarily and in the normal course of events would not have happened in the ordinary course of events unless the defendants failed to use ordinary care in the design, installation and testing of said well head, well head valve and kill line; that the circumstances surrounding the plaintiff's injuries were such that the plaintiff was not then and is not now in a position to know or learn what specific conduct, what actions of omission to act brought about the explosion, but the defendant being in exlusive control of the kill line, well head and well head valve may reasonably be expected, under all the circumstances, to know and be able to explain the precise cause of the explosion, which caused plaintiff's injuries and damages.

VII.

Plaintiff charges that the negligence and carelessness of the defendant herein was so willful and wanton as to constitute

gross negligence, for which plaintiff is entitled to punitive damages.

VIII.

That as a direct and proximate result of the negligent actions of the defendant, and its agents and employees, in proximately causing the accident herein, plaintiff was seriously, painfully and permanently injured; that plaintiff sustained multiple bruises, abrasions and contusions with multiple fractures of his body, and in particular, his right leg and pelvis; that plaintiff's injuries to his right leg were so severe that he eventually lost his right leg by amputation; that plaintiff has endured excruciating pain and suffering, and will continue to suffer; that plaintiff has sustained injuries to his back and injuries to his left leg and knee, all of which have caused him to be totally disabled since this accident. Plaintiff has sustained a total loss of earning capacity and is totally and permanently disabled. Plaintiff has been made to and will continue to suffer extreme mental anguish and physical pain from his injuries. Plaintiff has incurred medical, hospital, doctor and drug bills to date in the approximate sum of $16,000.00, and will continue to incur such expenses in the future in an effort to alieviate his pain.

WHEREFORE, Plaintiff brings this his suit and demands judgment of and from the defendant corporation in the amount of $1,000,000.00, actual and punitive damages, plus all costs incurred herein.

Respectfully submitted,

Nevel A. Walters, Plaintiff

Leonard B. Melvin, Jr.

Of Counsel for Plaintiff

Leonard B. Melvin, Jr.
Sarah L. Entrekin
Melvin & Melvin
P.O. Box 142
Laurel, Mississippi 39440
Ph. 601-426-6306
Of Counsel for Plaintiff

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

Civil Action No._____

Mrs. Delphia Walters,
Plaintiff,

vs.

Inexco Oil Company,
a Delaware Corporation,
Defendant.

DECLARATION

Comes now MRS. DELPHIA WALTERS, PLAINTIFF, and files this her Declaration for damages against INEXCO OIL COMPANY, a Delaware Corporation, and for cause of action, would show unto the Court the following:

I.

That the plaintiff is an adult resident citizen of the Second Judicial District of Jones County, Mississippi.

II.

That the defendant, INEXCO OIL COMPANY, is a Delaware Corporation organized and existing under and by virtue of the laws of the State of Delaware qualified to do business and doing business in the State of Mississippi, and has appointed as its agents for service of process in the State of Mississippi, C.T. Corporation System, 118 North Congress Street, Jackson, Hinds County, Mississippi.

III.

That on and before the 26th day of February, A.D., 1971, the plaintiff's husband, Nevel A. Walters, was employed as a floorman with Loffland Brothers Company, an oil well drilling company, and was in the course of performing his duties and responsibilities of employment at Masonite Well No. 3 located in the Prairie Branch Field in Section 15, Township 1 North, Range 14 East in Clarke County, Mississippi; that Loffland Brothers Company was drilling said oil well for the defendant, Inexco Oil Company, on said location; that the oil well location was owned and operated by the defendant corporation, which was in complete charge of all operations at said well site; that it was the duty of the defendant corporation to promulgate safety regulations and precautions pertaining to the well site, its equipment and surrounding area; that because of the nature of the oil well drilling and prospect of production, it was extraordinarily dangerous and hazardous to persons working in and around the well site; that the corporate defendant assumed the duty of performing safety measures at the said well site; that it was the duty of the corporate defendant to specify safe materials and equipment and to prescribe safety regulations and precautions and to properly test and inspect said materials and equipment to insure the safety of those required to work in and about said well site.

IV.

That on said date and occasion, plaintiff's husband was an employee of Loffland Brothers Company and was working as a floorman on Loffland Brothers' Rig No. 328, which was drilling said oil well for the defendant corporation; that said well site and its entire operations were under the control and supervision of the defendant and its agents and supervisors; that at the specific instance and request of the defendant, Inexco Oil Company, and its agents and supervisors, plaintiff's husband had been directed and instructed to go down to ground level and to hook up the kill line from the mud line to the valves on the well

head, at a time when the pumps were pumping, and was in the process of preparing to connect a chicksan union to the mud line when, suddenly and without any warning whatsoever, a two (2) inch nipple between the well head and the well head valves failed, causing an explosion and causing the steel chicksan line to be blown into plaintiff's husband's leg and knocking plaintiff's husband down under the drilling line spool, seriously and painfully injuring plaintiff's husband, as hereinafter described.

V.

Plaintiff charges and alleges that the corporate defendant, through its duly authorized agents and employees, was guilty of negligence which proximately caused the accident herein, said negligence consisting more particularly of the following:

A. Negligently failing to exercise reasonable care in the specification, design, inspection and testing of the low-pressure nipple between the well head and the well head valve.

B. Negligently failing to properly install and test the kill line when the blowout preventer stack was originally installed and tested.

C. Negligently failing to properly install the kill line to the flow cross.

D. Negligently failing to properly install and test the kill line when the pumps were not pumping.

E. Negligently failing to give the plaintiff's husband reasonable warning of the inherent dangers incident to being in close proximity to the low-pressure nipple between the well head and the well head valve as the kill line was being installed.

F. Negligently failing to use reasonable care in the installation and testing of the kill line.

G. Negligently failing to provide plaintiff's husband safe place in which to perform the duties of his employment.

H. Negligently failing to inspect and test the well head, well head valve and low-pressure nipple prior to killing a "kick".

I. Negligently failing to provide adequate supervision and direction.

J. Negligently failing to furnish, install and maintain proper and adequate safety devices.

VI.

That the defendant corporation and its agents and supervisors were, at the time, in exclusive control of the oil well site and all operations, and in particular, the well head, well head valve and kill line, and its design, installation and testing, and the defendant corporation, by and through its agents and supervisors, negligently caused and permitted the kill line to be improperly installed and tested, causing an explosion, at a time when plaintiff's husband was a business invitee on the premises and in the course of his employment in and about the ground level area; that as a result of the explosion, plaintiff's husband was severely injured; that this occurrence was one which ordinarily and in the normal course of events would not have happened in the ordinary course of events unless the defendants failed to use ordinary care in the design, installation and testing of said well head, well head valve and kill line; that the circumstances surrounding the plaintiff's husband's injuries were such that the plaintiff was not then and is not now in a position to know or learn what specific conduct, what actions of omission to act brought about the explosion, but the defendant being in exclusive control of the kill line, well head and well head valve may reasonably be expected, under all the circumstances, to know and be able to explain the precise cause of the explosion which caused plaintiff's husband's injuries and damages.

VII.

That as a direct and proximate result of the negligent actions of the defendant, and its agents and employees, in proximately causing the accident herein, plaintiff's husband was seriously, painfully and permanently injured; that plaintiff sustained multiple bruises, abrasions and contusions with multiple fractures of his body, and in particular, his right leg and pelvis; that plaintiff's husband's injuries to his right leg were so severe that he eventually lost his right leg by amputation; that plaintiff's husband has endured excruciating pain and suffering, and will continue to suffer; that plaintiff's husband has sustained injuries to his back and injuries to his left leg, all of which have caused him to be totally disabled since this accident. Plaintiff would show that plaintiff's husband sustained severe crushing injuries to his pelvis with lacerations of his right buttocks; that plaintiff's husband's injuries have required him to be hospitalized on numerous occasions and to undergo surgical procedures on numerous occasions and plaintiff's husband has suffered extreme pain, discomfort, and inconvenience; that plaintiff's husband has incurred large medical expenses in an effort to relieve the intense pain; that as a result of the injuries sustained, plaintiff's husband remains in a chronic state of anxiety and depression; that the injuries received by palintiff's husband were and are painful and he will continue to suffer and undergo physical and mental pain and anguish for the remainder of his life; that his loss of his right leg, the permanent injuries to his left leg, permanent scarring on the buttocks and back injury has not and will not return to their normal function and movement, and the use thereof has been permanently impaired, restricted and limited, and that the injuries are permanent, resulting in his being permanently and totally disabled to work and earn a living; that plaintiff's husband has a permanent disability and permanent limp because of the loss of his right leg.

VIII.

Plaintiff would further show unto the Court that prior to the injuries sustained by reasons of the defendant's negligence, as aforesaid, palintiff's husband was 32 years of age, was in good health, vivacious and fully capable of performing and actually did perform the usual duties of a husband and head of the household; that prior to said accident, plaintiff's husband was a pleasing, attentive and loving husband to the plaintiff, and as a consequence thereof, plaintiff received much comfort and happiness in his society and companionship, and plaintiff and her husband had a normal and active conjugal relationship; that by reason of said injuries, plaintiff's husband has been unable to perform the duties which he had theretofore performed for her; and that as a result of said injuries, plaintiff has been deprived of the companionship, company, consortium and services of her husband, and her comfort and happiness in his companionship have been greatly impaired; that plaintiff has been deprived of her normal and active conjugal relationship with her husband; that because of the injuries to her husband, plaintiff will continue to be permanently so deprived of the comfort, companionship, consortium and services usually and ordinarily provided by a husband in good health and of unimpaired vigor and strength.

IX.

That all of the losses, deprivations, and damages sustained by the plaintiff, as aforesaid, were a direct and proximate result of the accident set forth which was directly and proximately caused by the defendants' negligent acts.

WHEREFORE, Plaintiff sues the defendant, INEXCO OIL COMPANY, and demands judgment against the defendant in the sum of $500,000.00, together with all costs incurred herein.

Respectfully submitted,

Mrs. Delphia Walters, Plaintiff

By: Leonard B. Melvin, Jr.
Of Counsel for Plaintiff

Leonard B. Melvin, Jr.
Sarah L. Entrekin
Melvin & Melvin
P. O. Box 142
Laurel, Mississippi 39440
Ph: 601-426-6306
Of Counsel for Plaintiff